

1 MR. WOOD: Your Honor, I would, I would suggest that we
2 exchange affidavits sometime in mid-July.

3 JUDGE CHACHKIN: All right.

4 MR. WOOD: I don't know if Mr. Cohen anticipates even
5 deposing these people or whether Your Honor would limit the
6 number that he would depose. But I think that mid-July would
7 be fair to GAF and give the other party time as well.

8 JUDGE CHACHKIN: All right. What date in July would
9 you propose?

10 MR. WOOD: I would say July 14th. Make it exactly two
11 months.

12 JUDGE CHACHKIN: All right. Now, on July 14th you will
13 exchange your affidavits of public witnesses. Is that
14 correct?

15 MR. WOOD: Yes, sir, and I would also suggest that if
16 Mr. Cohen had public witnesses he would exchange affidavits as
17 well that day.

18 JUDGE CHACHKIN: Anybody who has public witnesses that
19 they wish to introduce evidence on we'll exchange their public
20 witness affidavits on that date, yes. Now, does anyone -- Mr.
21 Cohen, do you have any objection to procedure which I, which I
22 mentioned, namely, that you would have a right to depose these
23 public witnesses and, and instead of without the need for my
24 to be present at the time of the taking of -- and, and in
25 other words, that --

FREE STATE REPORTING, INC.

Court Reporting Depositions
D.C. Area (301) 261-1902
Balt. & Annap. (410) 974-0947

1 MR. COHEN: No, I understand --

2 JUDGE CHACHKIN: -- evidence will go into the record in
3 lieu of having them appear later on at a hearing?

4 MR. COHEN: Well, in the Longmont proceeding which I am
5 involved in, the, the presiding officer -- Judge Steinberg
6 mentioned that you, that you had been doing this and he
7 proposed it and we adopted that procedure in Longmont and it
8 worked very well, sir. It, it worked much better than the
9 older type of procedure that I was accustomed to. So I have
10 no problem with it at all.

11 JUDGE CHACHKIN: All right. So after the parties have
12 exchanged their affidavits of public witnesses, I'll establish
13 the date of July 21st for the parties to notify which
14 witnesses they wish to, they wish to take the testimony of --
15 depose. And then is there's any -- parties have any, any
16 problems arise as to the number of public witnesses or what-
17 have-you I'll rule on it -- the parties can request a
18 conference and I'll rule on the matter before the actual
19 deposition. But I'll leave it to the parties to establish a
20 date -- stipulate, reach a date as to when the depositions of
21 any public witnesses will be taken and those depositions will
22 be offered in evidence in, in lieu of their testimony. And
23 that's the procedure we'll follow. Now, is there anything
24 else the parties want to discuss this morning? I'll, I'll,
25 I'll go over this list to make sure that we have all the dates

FREE STATE REPORTING, INC.

Court Reporting Depositions
D.C. Area (301) 261-1902
Balt. & Annap. (410) 974-0947

1 here, but --

2 MR. COLE: Your Honor, may I, may I correctly assume
3 that you will issue an order dismissing Fidelio?

4 JUDGE CHACHKIN: Yes.

5 MR. GOLDSTEIN: And these dates will be memorialized in
6 an order also?

7 JUDGE CHACHKIN: Yes.

8 MR. GOLDSTEIN: Thank you.

9 JUDGE CHACHKIN: But let, let me just indicate the
10 dates now so the parties can understand. June 3rd is the date
11 for filing the motion of production of documents, and June 3rd
12 is also the date for notices of taking depositions. And
13 documents will be produced by July 19th, and depositions will
14 be taken by August 9th. Now, it may very well be that since
15 we have an August 9th deposition date that the August 9th
16 deposition date may also encompass the public witnesses so
17 that it'll all be done at one time if that's feasible with the
18 parties. Pardon me?

19 MR. GOLDSTEIN: I thought that the depositions were to
20 commence on August 9th.

21 JUDGE CHACHKIN: Depositions are to commence on
22 August 9th, that's correct. Taking of depositions will
23 commence on August 9th. Also, on July 14th the parties will
24 exchange affidavits of public witnesses. And on July 21st --
25 by July 21st -- or on or before July 21st, the parties shall

FREE STATE REPORTING, INC.

Court Reporting Depositions
D.C. Area (301) 261-1902
Balt. & Annap. (410) 974-0947

1 | notify each other as to which witnesses -- which public
2 | witnesses they wish to depose. And as I indicated, if there
3 | are any questions arise, any problems, I'm prepared to hold a
4 | conference to, to resolve those matters. Further dates that
5 | the -- that's been agreed to here are exchange of documents on
6 | September 13th and that of course will include the, the
7 | affidavits and any deposition testimony taken of these
8 | affidavits.

9 | MR. GOLDSTEIN: Your Honor, may I just make a point of
10 | clarification? I think the term public witnesses is a
11 | misnomer in this instance.

12 | JUDGE CHACHKIN: Well, we'll get to that in a minute as
13 | to what constitutes a public witness so we understand what
14 |

1 Now, the Bureau has raised a question about what
2 constitutes public witnesses which is something that comes up
3 in these comparative renewal cases. And Mr. Goldstein, you
4 want to --

5 MR. GOLDSTEIN: Yes. I think according to the rules a
6 public witness is someone from the general public who contacts
7 the Commission and says I would like to participate in the
8 hearing and I have testimony that I believe is relevant to it.

9 JUDGE CHACHKIN: Well, that's not the public witness
10 that we're talking about.

11 MR. GOLDSTEIN: That's exactly right, but the public
12 witnesses you're talking about are a misnomer because it's
13 really witnesses in support of the cases, either the applicant
14 or the licensee. So I would call them party witnesses --

15 JUDGE CHACHKIN: We certainly can call them party
16 witnesses so it'll avoid the confusion because they will be
17 appearing on behalf of one of the parties.

18 MR. GOLDSTEIN: That's precisely the point.

19 JUDGE CHACHKIN: So they are party witnesses to that
20 extent. And in that way it avoids the problem that Mr.
21 Goldstein talked about, namely, the Commission defines public
22 witnesses as those who, who advise the Bureau they wish to
23 testify as a member of the public and the Bureau makes a
24 decision whether or not their testimony would be useful.

25 MR. WOOD: Your Honor, could I ask a question about

FREE STATE REPORTING, INC.

Court Reporting Depositions
D.C. Area (301) 261-1902
Balt. & Annap. (410) 974-0947

1 that?

2 JUDGE CHACHKIN: Yes.

3 MR. WOOD: Sometimes in these cases a challenger will
4 put on a witness that's sort of an expert opinion, he's not
5 what I might loosely call a public witness, he's not a
6 listener or a member of a group, he's some sort of expert.
7 This would fall under that what you've said as well. He'd
8 have to be identified or his testimony produced on the
9 relevant date?

10 JUDGE CHACHKIN: He would not be -- he does not come
11 within the July 14th date. Obviously, he comes within the
12 date of, of the documents that you would supply or, or, or
13 notices -- take depositions. Are you, are you intending -- is
14 this a situation where you intend to put on any expert
15 witnesses?

16 MR. WOOD: Well, I certainly do not, but it's, it's --
17 typically a challenger might, and without interrogatories we
18 would not be able to ascertain who that person is. I mean,
19 there may just be an academic question, I, I don't know what
20 Class intends.

21 JUDGE CHACHKIN: Does Class intend to put on any
22 experts?

23 MR. COHEN: We -- I don't know, Your Honor. I mean,
24 there hasn't been any consideration given to that at this
25 point so I can't speak to that.

FREE STATE REPORTING, INC.

Court Reporting Depositions
D.C. Area (301) 261-1902
Balt. & Annap. (410) 974-0947

1 MR. WOOD: I think the easiest approach, Your Honor,
2 would be if they would simply notify us of such a person's
3 name by a particular date, say that July 14th date.

4 JUDGE CHACHKIN: All right. If anyone intends to put
5 on any expert witnesses they should notify the other party by
6 July 14th. Well, I would hope that the parties would -- if
7 this hearing goes forward, would attempt to get together and
8 try to stipulate as much as they can, and also if there are
9 going to be any expert witnesses in order to avoid any problem
10 with surprise and delaying the hearing that they would reveal
11 who their expert witnesses are so the other party would have
12 an opportunity to depose them. I, I recognize there is a
13 problem because -- well, there is a motion for production of
14 documents and I assume under, under -- when you ask for
15 documents I assume you could phrase it in such a way as to ask
16 for any documents of, of any experts or something of that
17 nature which would give you an inkling as -- whether or not
18 they intend to produce such evidence.

19 MR. COHEN: Your Honor, in view of your ruling Class is
20 not going to be coy -- if, if, if there is an intention --
21 there's no milage on, on Class's part to try to disguise this
22 or hide it or obfuscate so we will be up front, I, I pledge
23 that to you.

24 JUDGE CHACHKIN: All right, all right. I just want to
25 make sure that we don't run into any question of surprise

FREE STATE REPORTING, INC.

Court Reporting Depositions
D.C. Area (301) 261-1902
Balt. & Annap. (410) 974-0947

1 | which would delay the hearing. That's what I -- so at the
2 | earliest point the parties would be advised of it so when
3 | depositions are taken they could depose that individual.
4 | Anything else this morning? All right. We're, we're now
5 | recessed then until the date for the admissions session of
6 | September 20th. Thank you.

7 | (Whereupon, at 9:49 a.m., the conference recessed.)
8 |
9 |
10 |
11 |
12 |
13 |
14 |
15 |
16 |
17 |
18 |
19 |
20 |
21 |
22 |
23 |
24 |
25 |

FREE STATE REPORTING, INC.

Court Reporting Depositions
D.C. Area (301) 261-1902
Balt. & Annap. (410) 974-0947

CERTIFICATE OF REPORTER, TRANSCRIBER, AND PROOFREADER

APPLICATIONS OF GAF BROADCASTING CO., et al.

Name

MM DOCKET NO. 93-54

Docket No.

WASHINGTON, D.C.

Place

MAY 14, 1993

Date

We, the undersigned, do hereby certify that the foregoing pages, numbers 1 through 32, inclusive, are the true, accurate and complete transcript prepared from the reporting by MARYKAE FLEISHMAN in attendance at the above identified proceeding, in accordance with applicable provisions of the current Federal Communications Commission's